

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DEMETRIC SCOTT,

Plaintiff,

v.

Case No. 12-CV-0198

JOHN CLARKE,

Defendant,

ORDER

Plaintiff, Demetric Scott, a state prisoner, filed a pro se complaint under 42 U.S.C. § 1983, regarding the medical care he received from defendant John Clarke on July 23, 2009, an emergency room doctor at Aurora Sinai Medical Center in Milwaukee, Wisconsin. This matter is now before me on plaintiff's motion for leave to proceed in forma pauperis, his motion to appoint counsel, and for screening of plaintiff's complaint.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. § 1915(b)(1). If a prisoner does not have the money to pay the filing fee, he can request leave to proceed in forma pauperis. Plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2), and has been assessed and paid an initial partial filing fee of \$7.48. I will grant his motion for leave to proceed in forma pauperis.

Next, I am required to screen complaints brought by plaintiffs seeking to proceed in forma pauperis. 28 U.S.C. § 1915(e)(2). I must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

To state a claim for relief under 42 U.S.C. § 1983, plaintiff must allege that: 1) he was deprived of a right secured by the Constitution or laws of the United States; and 2) the deprivation was visited upon him by a person or persons acting under color of state law. Buchanan-Moore v. Cnty. of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009) (citing Kramer v. Village of North Fond du Lac, 384 F.3d 856, 861 (7th Cir. 2004)); see also Gomez v. Toledo, 446 U.S. 635, 640 (1980). The court is obliged to give plaintiff's pro se allegations, "however inartfully pleaded," a liberal construction. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)).

Plaintiff's complaint addresses treatment he received from John Clarke, a doctor in the emergency room at Aurora Sinai Medical Center in Milwaukee, Wisconsin, on July 23, 2009. Plaintiff was not a prisoner at that time. Although plaintiff is now incarcerated, there is nothing in his complaint to suggest that Dr. Clarke was acting under the color of state law while treating patients in the emergency room of a private hospital. Even if plaintiff could state a claim that he was deprived of a right secured by the Constitution or laws of the United States, I must dismiss plaintiff's complaint because Dr. Clarke was not acting under the color of state law when he treated plaintiff. See Buchanan-Moore, 570 F.3d at 827. This dismissal renders moot plaintiff's motion to appoint counsel.

THEREFORE, IT IS ORDERED that plaintiff's motion for leave to proceed in forma pauperis [DOCKET #2] **GRANTED**.

IT IS FURTHER ORDERED that this action be and hereby is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) for failure to state a claim.

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has brought an action that was dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B).

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has incurred a "strike" under 28 U.S.C. §1915(g).

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel [DOCKET #4] is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from plaintiff's prison trust account the \$342.52 balance of the filing fee by collecting monthly payments from plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

I FURTHER CERTIFY that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) unless plaintiff offers bonafide arguments supporting his appeal.

Dated at Milwaukee, Wisconsin, this 21st day of March 2012.

s/

LYNN ADELMAN
District Judge